

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

JUN 16 2020

Clerk, U S District Court  
District Of Montana  
Billings

ESTATE OF SEAN PATRICK  
O'BRIEN, ROBIN LARSON, and  
K.O., a minor child, by and through  
Personal Representative Robin Larson,

Plaintiff,

vs.

CITY OF LIVINGSTON, a political  
subdivision of the State of Montana,  
KEVIN ENGLE, ANDREW  
EMANUEL, DALE JOHNSON, and  
JOHN DOES 1-10,

Defendants.

CV 18-106-BLG-SPW

ORDER

Before the Court are United States Magistrate Judge Cavan's findings and recommendation issued May 12, 2020. (Doc. 64). Judge Cavan recommends the Court grant in part and deny in part Defendant City of Livingston's and Defendant Dale Johnson's motion for summary judgment.

**I. Standard of review**

The Plaintiffs' filed a timely objection to the findings and recommendation. (Doc. 65). The Plaintiffs are entitled to de novo review of those portions of Judge Cavan's findings and recommendation to which they properly object. 28 U.S.C. §

636(b)(1); Fed. R. Civ. P. 72(b)(3). All other portions of Judge Cavan's findings and recommendation are subject to clear error review. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

## **II. Judge Cavan's recommendations**

Judge Cavan recommended the Court grant summary judgment in favor of Defendant Dale Johnson on all claims; grant summary judgment in favor of Defendant City of Livingston as to Counts I, II, and VI, and as to Count III to the extent it is based on negligent hiring and supervision and negligent adoption and/or enforcement of policies; deny Defendant City of Livingston summary judgment as to Count III to the extent it is based on the negligent conduct of Defendants Kevin Engle and Andrew Emanuel; and deny Defendant City of Livingston summary judgment as to Counts IV and V.

## **III. The Plaintiffs' objection**

The Plaintiffs make a lone objection: "To the extent the Findings and Recommendation state that if Engle and Emanuel are found to be entitled to qualified immunity, the City does not have to defend and indemnify them for civil rights violations, the Plaintiffs object. The Plaintiffs maintain, as articulated in prior briefing, that the City has a duty to defend and indemnify Engle and Emanuel for any and all tortious conduct *or civil rights violations* for which they are found to be liable at trial." (Doc. 65 at 1-2) (emphasis original).

The Court overrules the Plaintiffs' objection. Engle and Emanuel cannot be found liable for a civil rights violation at trial because the Court previously granted them qualified immunity from § 1983 liability. (Doc. 59).

#### **IV. Conclusion and order**

It is hereby ordered:

1. Judge Cavan's findings and recommendation (Doc. 64) are adopted in full;
2. The Plaintiffs' objection (Doc. 65) is overruled;
3. Defendant City of Livingston's and Defendant Dale Johnson's motion for summary judgment (Doc. 44) is granted in part and denied in part. Summary judgment is granted in favor of Defendant Dale Johnson on all claims; summary judgment is granted in favor of Defendant City of Livingston as to Counts I, II, and VI, and as to Count III to the extent it is based on negligent hiring and supervision and negligent adoption and/or enforcement of policies; summary judgment is denied to Defendant City of Livingston as to Count III to the extent it is based on the negligent conduct of Defendants Kevin Engle and Andrew Emanuel; and summary judgment is denied to Defendant City of Livingston as to Counts IV and V.

DATED this 16<sup>th</sup> day of June, 2020.

  
SUSAN P. WATTERS  
United States District Judge